IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4748 of 1999

with

CIVIL APPLICATION No 7660 of 1999

Date of Decision: 27-12-2004

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHARTIBEN AMRUTLAL PANDYA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.Hardik Rawal, Adv.

For the Respondent-Claimant Ms.Yamini Desai, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Admit. Ms.Yamini Desai, learned counsel for the respondent-claimant, waives service.

#. This Appeal is directed against the Award dated 1.2.1999 of the Motor Accident Claims Tribunal (Aux.)

Junagadh in Claim Case No.536 of 1990.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Briefly stated, Ramaben (deceased) was travelling by Gujarat State Road Transport Corporation bus, Junagadh-Una road. When it came at Veraval Bus Stand, near Platform No.3, deceased (50) was getting down from the bus. At this time, bus driver drove the bus, deceased fell down and sustained serious injuries. She was taken to Government Hospital, Veraval, where she died. At the time of accident, her salary was Rs.1800/= p.m., claim for compensation is Rs.1,56,000/= by the daughter.

GSRTC filed written statement (Ex.10) denying the factum of injury and contended that death was not as a result of accidental injury, contributory negligence pleaded. Therefore, Corporation stated that the driver of the Corporation is not liable. Consequently, claim petition deserves to be dismissed.

The Claims Tribunal, on the basis of evidence, came to the conclusion that the deceased died due to injuries sustained in the accident caused on account of rash and negligent driving of the vehicle involved in the accident. Consequently, the claimant has been held entitled to compensation of Rs.1,35,000/= carrying interest at the rate of 12% p.a. from the date of application till realization with costs. Against this judgment, this Appeal has been filed.

#. Shri Hardik Raval, learned counsel for the appellant, submits that the driver of GSRTC bus is not liable for the accident. Negligence was of deceased who got down from the bus when it was being reversed. Further, compensation awarded is excessive in the absence of satisfactory proof of income. These submissions are opposed by Ms.Yamini Desai, learned counsel for the claimant, submitting that just compensation has been awarded.

#. Matter is considered. Income of the deceased is taken to be Rs.2,000/= per month, multiplied by 12. Thereafter, multiplier of five has been used since deceased was 50 year old and claimant is married daughter with two children. With this background, accident is a result of rash and negligent driving of the bus by its driver. Care should have been taken that passengers do

not get down from the bus when it is being reversed. Conductor should have been there to guide the driver. Conductor has not been examined to prove negligence of the deceased, therefore, it can be held that the driver and conductor should not have driven the bus unless all the passengers were in or out of the bus. Duty to take care of the safety of passengers is rested on driver and conductor. They did not take care for the same, therefore, rash and negligent act on their part is proved.

With regard to compensation, in the totality of circumstances, it can be said that amount is not excessive.

Accordingly, Appeal fails and is dismissed, leaving the parties to bear their costs.

Civil Application for stay stands disposed of.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)